

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

ORDER

Before the court is Defendant, Norman Regional Health System's Partial Motion to Dismiss, filed November 21, 2008 (doc. no. 24), wherein defendant seeks to dismiss plaintiff's status-based Burk¹ public policy tort claims alleged in Count I of the Amended Complaint. In support of its motion, defendant relies upon the court's previous ruling in Eapen v. Dell Marketing USA, LP, Case No. CIV-07-277-F, 2007 WL 2248170 (W.D. Okla. August 2, 2007).

Plaintiff, Jerrold J. Cooper, in his response brief,² recognizes the undersigned's previous ruling, but states that because of the uncertainty in Oklahoma law and a disagreement between some of the federal judges in this district, plaintiff must preserve the Burk claims. Plaintiff suggests that a ruling by this court should be deferred pending a ruling by the Oklahoma Supreme Court in Shirazi v. Childtime Learning Center, Inc., Case No. CIV-07-1289-C³, and Smith v. Pioneer Masonry, Inc.,

¹ *Burk v. K-Mart*, 770 P.2d 24 (Okla. 1989).

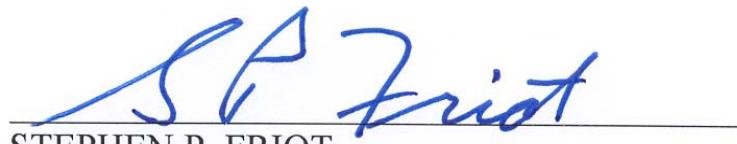
² Although LCvR 7.1(i) permits the filing of a reply brief to address a new matter raised in a response brief, the court concludes that no reply brief is necessary.

³ The court notes that this case recently settled at a mediation session. *See*, Case No. CIV-07-1289-C, doc. no. 44.

SC 105,285. The undersigned, however, declines to delay these proceedings pending a ruling in these cases. The court concludes that plaintiff's remedies under Title VII of the Civil Rights Act of 1964 and 42 U.S.C. § 1981 are adequate and preclude plaintiff's Burk claims of race discrimination and hostile work environment based upon race. See reasoning and authorities discussed in Eapen, *supra*.

Accordingly, Defendant, Norman Regional Health System's Partial Motion to Dismiss, filed November 21, 2008 (doc. no. 24), is **GRANTED**.

DATED December 10, 2008.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE

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